



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: John Short & Associates

File: B-222603.3

Date: October 2, 1986

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### DIGEST

1. Protest is dismissed as untimely when it is not filed within 10 working days of the date the basis for protest is first known or should have been known.
2. Protest that the procuring agency changed its evaluation criteria for award without amending the solicitation is dismissed as without merit when the criteria listed in the solicitation were, even by the protester's account, those which were used in the evaluation. The protester's reliance on conflicting oral advice allegedly given by agency personnel was at the protester's own risk.

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### DECISION

John Short & Associates (John Short) protests the Department of the Army's award of a contract to PHP Corporation (PHP) under request for proposals No. MDA 903-86-R-0077, for the establishment and operation of a primary health care facility for military personnel. John Short alleges that its proposed costs were disclosed to other offerors prior to the award of the contract, resulting in an illegal auction. The protester also alleges that the agency changed the evaluation criteria for award without amending the solicitation.

We dismiss the protest. We do so without obtaining a full report from the contracting agency, since it is clear from the information submitted to us thus far that the first protest issue is untimely and the second issue is without merit. 4 C.F.R. § 21.3(f) (1986).

The Army initially proposed to award the contract at issue to John Short. In response to a protest filed by another offeror, however, the agency decided to reopen discussions with all offerors, and to request an additional round of best

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and final offers. At that time, John Short wrote a letter (dated June 6, 1986) to the contracting officer acknowledging the agency's decision to hold further discussions. The letter specifically stated that the firm did not contest that decision. The protester expressed its intention to "reserve any and all of the rights that we hold under the Federal Acquisition Regulation, and we may choose to assert those rights later." Also in this letter, John Short expressed its belief that at least two offerors had been made aware of John Short's prices as a result of unofficial debriefings. On August 18, the Army advised John Short by letter that PHP had been selected for the award. John Short filed its protest in our office August 27.


It is apparent from John Short's June 6 letter, a copy of which was submitted to us in support of this protest, that the protester was aware of the first basis of its protest--i.e., the allegation that its prices had been improperly exposed--by June 6. Our Bid Protest regulations require that a protest be filed within 10 working days of the date the basis of protest is first known or should have been known, 4 C.F.R. § 21.2(a)(2); our regulations also provide for dismissal of any protest which fails to comply with that requirement, 4 C.F.R. § 21.3(f). Here, the protest was filed more than two months after John Short was aware of the basis for protest and is therefore untimely. Furthermore, our regulations do not include any provision that would allow a protester to reserve its right to protest any prejudice that might arise until a future time, as the protester attempted to do here. The time for fixing the date of a protest for timeliness purposes is when the protest is actually filed and not when the protester indicates an intent to file in the future. Decom Systems, Inc., B-215167, Sept. 24, 1984, 84-2 CPD ¶ 333. We therefore will not consider this portion of the protest further.

John Short also contends that the Army changed the evaluation criteria for award without amending the solicitation as required by the Federal Acquisition Regulation, 48 C.F.R. § 15.606(a) (1985). In this connection, the protester alleges that during a briefing after the initial award decision, the Army advised John Short that it had submitted the lowest cost offer, based on a unit cost for 48,000 patient visits. From this disclosure, John Short contends that it was led to believe that this figure represented the most accurate estimate of the agency's requirement and that

the Army would again use 48,000 patient visits as the criterion for evaluating the best and final offers, rather than the 20,000 patient-visit figure listed in the RFP.<sup>1/</sup>

The protester is correct in asserting that an agency must adhere to the evaluation criteria established in a solicitation. See, for example, Bendix Field Engineering Corp., B-219406, Oct. 31, 1985, 85-2 CPD ¶ 496. We find no support in this case, however, for concluding that the evaluation criteria were changed. Rather, the RFP listed 20,000 clinic visits per year as the evaluation criterion for cost, and the protester agrees that this figure was applied in the evaluation of offers. To the extent the protester relied upon information allegedly provided orally by agency personnel, in contradiction of the RFP terms, it did so at its own peril. Here, the RFP advised offerors that oral explanations given before the award of the contract would not be binding on the agency. In this connection, we have held that when a solicitation expressly cautions offerors against relying upon oral advice from agency personnel, offerors who ignore the admonition and rely upon the allegedly erroneous advice in conflict with specific language in the solicitation must suffer the consequences. See ACKCO, Inc., B-220849, Feb. 28, 1986, 86-1 CPD ¶ 209..

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel

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<sup>1/</sup> "Cost" was initially described in Section M-2 (Evaluation Factors) of the RFP as "cost per clinic visit (24,000 per year plus four option years applicable to each contract.)" The 24,000-figure in this provision was amended, effective March 26, 1986, to 20,000.